U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 0 8 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a health care services business. It seeks to employ the beneficiary permanently in the United States as a management analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

Section 203(b)(2) of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In denying the petition the Director found that [redacted] in San Bernardino, California – the institution that awarded the beneficiary a "Master of Business Administration" (MBA) in 2006 – is not a regionally accredited institution in the United States. Therefore, the beneficiary did not have an actual master's degree, was not eligible for classification as an advanced degree professional, and did not meet the job requirements on the labor certification.

On appeal, counsel points out that [redacted] is an approved institution under California state law. Counsel asserts that an MBA from an approved institution in California should be regarded as an "advanced degree" under 8 C.F.R. § 204.5(k)(2). In counsel's view, therefore, the beneficiary meets the educational requirement in the labor certification for classification as an advanced degree professional under section 203(b)(2) of the Act. The AAO does not agree.

Factual and Procedural History

The immigrant visa petition, Form I-140, was filed on February 19, 2008. Documentation submitted with the petition included academic records from [redacted] showing that the beneficiary was awarded a "Master of Business Administration" (MBA) from that institution on June 20, 2006. The beneficiary's MBA program at [redacted] lasted one calendar year and consisted of 12 courses taken in two six-course semesters of six and five months, respectively.

In a Request for Evidence (RFE) issued on August 6, 2008, the Director requested the petitioner to submit documentation to establish that [redacted] is a regionally accredited institution. In response to the RFE counsel for the petitioner stated that institutional approval of

had been granted by the State of California's Bureau for Private Postsecondary and Vocational Education (BPPVE), in accordance with the provisions of California Education Code (Cal. Ed. Code) 94900 and/or 94915. As evidence thereof counsel submitted a photocopied document on the BPPVE's letterhead, granting "Institutional Approval" in accordance with provisions 94900 and/or 94915 of the Cal. Ed. Code. The approval language reads as follows:

> This institution has received approval to operate from the Bureau for Private Postsecondary and Vocational Education [BPPVE]. An approval to operate means that the [BPPVE] has determined and certified that the institution meets the minimum standards for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its programs.

The document stated that the effective date of the Approval was December 1, 2005 (during the middle of the beneficiary's MBA program), and its expiration date was November 23, 2010.

The Director denied the petition on November 4, 2008, finding that institutional approval by the State of California is not the same as accreditation by a regional accreditation body approved by the United States Department of Education (DoEd). Absent any evidence that was accredited by a DoEd-approved regional accreditation body, the Director indicated that its "MBA" credential would not be considered a "master's degree as that term is normally understood." The Director distinguished a state's approval to operate, which signifies that an institution satisfies "certain minimum requirements" of educational content, from regional accreditation, which "signifies that an institution has attained a threshold level of academic quality." The Director concluded that the beneficiary's "MBA" from "cannot be presumed to be an actual master's degree" because is not a regionally accredited institution. Therefore, the beneficiary did not meet the job requirements on the labor certification and was ineligible for classification as an advanced degree professional under section 203(b)(2) of the Act.

On appeal counsel emphasizes the importance of state approval in view of the fact, recognized by the Director in his decision, that there is no central authority in the United States exercising control over postsecondary educational institutions. Counsel quotes the language of Cal. Ed. Code section 94302(g) – defining "approval" or "approval to operate" in California – which is incorporated in "Institutional Approval" document. Since and its MBA program have been approved by the BPPVE pursuant to California state law,[1] counsel asserts that an MBA graduate from should be regarded as having an "advanced degree" within the meaning of 8 C.F.R. § 204.5(k)(2).

---

[1] The California Education Code was amended, and the BPPVE replaced by the Bureau for Private Postsecondary Education (BPPE), pursuant to the Private Postsecondary Education Act of 2009, Assembly Bill (AB) 48, enacting Title 3, Division 10, Part 59, Chapter 8, of the Cal. Ed. Code, signed into law by the Governor of California on October 11, 2009, effective January 1, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record.

The issues on appeal are twofold:

- Whether the beneficiary's educational credential from makes her eligible for classification as an "advanced degree professional" under section 203(b)(2) of the Act.

- Whether the beneficiary's degree from accords with the job requirements set forth on the ETA Form 9089 (labor certification) to qualify her for the proffered position.

Eligibility for the Classification Sought

The ETA Form 9089 in this case was accepted for processing by the DOL on September 17, 2007, and certified by the DOL on October 25, 2007. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) of the Act, as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Immigration Act of 1990 Act added section 203(b)(2)(A) to the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244, is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the

alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference (advanced degree professional) immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (INS, or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2] In order to have experience and education equating to an

[2] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa

advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2).

The degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).[3]

While the regulatory language of 8 C.F.R. § 204.5(k)(2) does not specifically state that a degree must come from an accredited college or university to qualify as an "advanced degree," that requirement is implicit in the regulation. As stated by the U.S. Department of Education on its website:

> The U.S. Department of Education does not accredit educational institutions and/or programs. However, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit. An agency seeking national recognition . . . must meet the Secretary's procedures and criteria for

---

classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[3] *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

> the recognition of accrediting agencies, as published in the *Federal Register* . . . . The Secretary . . . makes the final determination regarding recognition.
>
> The United States has no . . . centralized authority exercising . . . control over postsecondary educational institutions in this country. . . . [I]n general, institutions of higher education are permitted to operate with considerable independence and autonomy. As a consequence, American educational institutions can vary widely in the character and quality of their programs.
>
> . . . [T]he practice of accreditation arose in the United States as a means of conducting nongovernmental, peer evaluation of educational institutions and programs. Private educational associations of regional or national scope have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs to determine whether or not they are operating at basic levels of quality.
>
> . . . Accreditation of an institution or program by a recognized accrediting agency provides a reasonable assurance of quality and acceptance by employers of diplomas and degrees.

www.ed.gov/print/admins/finaid/accred/accreditation.html (accessed January 18, 2013).

The DoEd's purpose in ascertaining the accreditation status of U.S. colleges and universities is to determine their eligibility for federal funding and student aid, and participation in other federal programs. Outside the federal sphere, the Council for Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. As stated on its website:

> Presidents of American universities and colleges established CHEA [in 1996] to strengthen higher education through strengthened accreditation of higher education institutions . . . .
>
> CHEA carries forward a long tradition that recognition of accrediting organizations should be a key strategy to assure quality, accountability, and improvement in higher education. Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established. CHEA will recognize regional, specialized, national, and professional accrediting organizations.
>
> Accreditation, as distinct from recognition of accrediting organizations, focuses on higher education institutions. Accreditation aims to assure academic quality and accountability, and to encourage improvement. Accreditation is a voluntary, non-governmental peer review process by the higher education community . . . . The work of accrediting organizations involves hundreds of self-evaluations and site visits

> each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort.

www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf (accessed January 18, 2013).

The DoEd and CHEA recognize six regional associations – covering the entire United States and its outlying possessions – that accredit U.S. colleges and universities. One of these is the Western Association of Schools and Colleges (WASC), Accrediting Commission for Senior Colleges and Universities – whose geographical scope includes California, Hawaii, and other U.S. possessions in the Pacific, and whose membership represents a broad range of public and private schools in the region and other education-related organizations. The WASC website includes a list of all the higher educational institutions in its jurisdiction that are either accredited or candidates for accreditation. in San Bernardino, California, does not appear on that list. *See* www.wascsenior.org/apps/institutions/ (accessed February 21, 2012). Thus, has not been accredited by the applicable accrediting agency recognized by the DoEd and CHEA – the WASC's Accrediting Commission for Senior Colleges and Universities – and there is no evidence that has requested accreditation by that agency.

The State of California acknowledges the qualitative difference between accredited and unaccredited educational institutions. The California Postsecondary Education Commission (CPEC), the state's planning and coordinating body for higher education from 1974 to 2011,[4] includes the following language regarding the "benefits associated with accreditation" on its website:

> Both the federal government and the states use accreditation as an indication of the quality of education offered by American schools and colleges.
>
> At the federal level, colleges and universities must be accredited by an agency recognized by the United States Secretary of Education in order for it or its students to receive federal funds.
>
> At the state level, California allows colleges and universities that are accredited by the Western Association of Schools and Colleges (the recognized regional accrediting agency for California) to grant degrees without the review and approval of the Bureau for Private Postsecondary Education (BPPE). A list of approved institutions is available at the California Bureau for Private Postsecondary Education (BPPE).
>
> In some states, it can be illegal to use a degree from an institution that is not accredited by a nationally recognized accrediting agency, unless approved by the state licensing agency. This helps prevent the possibility of fraud . . . .

---

[4] The CPEC ceased operations on November 18, 2011, after its funding was eliminated. *See* http://www.cpec.ca.gov/ (accessed January 23, 2013) and associated Press Release.

www.cpec.ca.gov/CollegeGuide/Accreditation.asp (accessed January 18, 2013).

The CPEC website goes on to warn about state laws in Illinois, Indiana, Maine, Michigan, Nevada, New Jersey, North Dakota, Oregon, Texas, and Washington regarding degree/diploma mills. *See id.*

The qualitative difference between accredited and unaccredited educational institutions, acknowledged by the CPEC, is also recognized by the State of California in its Education Code. Cal. Ed. Code section 94813 defines "accredited" as follows:

> "Accredited" means an institution is recognized or approved by an accrediting agency recognized by the United States Department of Education.

With respect to unaccredited institutions that are approved to operate in California, Cal. Ed. Code section 94817.5 provides the following basic definition:

> "Approved to operate" or "approved" means that an institution has received authorization pursuant to this chapter to offer to the public and to provide postsecondary educational programs.

Cal. Ed. Code section 94887 sets the following guideline for the BPPE's grant of an approval to operate:

> An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau [BPPE], and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards . . . .

As the foregoing authorities indicate, accreditation of a college or university by a regional accrediting body recognized by the DoEd and CHEA is a badge of quality. As stated on their respective websites, accreditation is intended "to assure academic quality and accountability" (CHEA) and to provide "a reasonable assurance of quality and acceptance by employers of . . . degrees" awarded by the accredited institutions (DoEd). Moreover, the imprimatur of a regional accrediting agency guarantees that a school's degrees will be recognized and honored nationwide. By comparison, an approval to operate by California's BPPE is a lower level endorsement that an educational institution "has the capacity to satisfy the minimum operating standards" (Cal. Ed. Code section 94887) with no guarantee that degrees awarded by that school in California will be recognized and honored nationwide.

The Immigration and Nationality Act is a federal statute with nationwide application. The regulations implementing the Act – including 8 C.F.R. § 204.5(k)(2) defining "advanced degree" for the purposes of section 203(b)(2) of the Act, as well as 8 C.F.R. § 204.5(l)(2) defining "professional" for the purposes of section 203(b)(3) of the Act – also have nationwide application. As defined in 8 C.F.R. § 204.5(k)(2), an "advanced degree" includes "any **United States academic**

or professional degree . . . above that of baccalaureate" (or a foreign equivalent degree), "[a] **United States baccalaureate degree**" (or a foreign equivalent degree) and five years of specialized experience (considered equivalent to a master's degree), and "a **United States doctorate**" (or a foreign equivalent degree). (Emphases added.) Similarly, "professional" is defined in 8 C.F.R. § 204.5(l)(2) as "a qualified alien who holds at least a **United States baccalaureate degree**" (or a foreign equivalent degree). (Emphasis added.) The repeated usage of the modifier "United States" to describe the different levels of (non-foreign) degrees makes clear the intention of the rulemakers that the regulations apply to degrees issued by U.S. educational institutions that are recognized and honored on a nationwide basis. The only way to assure nationwide recognition for its degrees is for the educational institution to secure accreditation by a regional accrediting agency approved by the DoEd and CHEA.

For an educational institution in California, the regional accrediting agency is WASC's Accrediting Commission for Senior Colleges and Universities. As previously discussed, the school that issued the beneficiary's degree – in San Bernardino – is not on the WASC list of accredited institutions. Nor is listed as a candidate for accreditation. Accordingly, the beneficiary's "Master of Business Administration" from cannot be deemed to have nationwide recognition. Therefore, it does not qualify as an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2).

Based on the foregoing analysis, the AAO determines that the beneficiary is not eligible for preference visa classification as an advanced degree professional under section 203(b)(2) of the Act and 8 C.F.R. § 204.5(k)(2). Thus, the petition cannot be approved.

Qualifications for the Job Offered

Relying in part on *Madany*, 696 F.2d at 1008, the Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien,

> and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.,* 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu,* 736 F. 2d at 1309.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification – "Job Opportunity Information" – describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the labor certification application, as certified by the DOL. *Id.* at 834.

In this case, Part H, lines 4 and 4-B of the labor certification state that the minimum educational requirement to qualify for the proffered position is a master's degree in business administration. Line 9 states that a "foreign educational equivalent" is acceptable. No training or experience is required.

The beneficiary does not meet the above requirements. As previously discussed, the beneficiary's degree from in San Bernardino, California, though called a "Master of Business Administration," does not qualify as a U.S. master's degree in business administration under the "advanced degree" definition of 8 C.F.R. § 204.5(k)(2) because it was not awarded by an educational institution that has been accredited by a regional accrediting agency recognized by the DoEd and CHEA. Nor does the beneficiary have a foreign educational equivalent to a master's degree in business administration. Since she does not fulfill the educational requirements in Part H of the labor certification, the beneficiary does not qualify for the job offered. For this reason as well, the petition cannot be approved.

Conclusion

The beneficiary does not have an "advanced degree" within the meaning of 8 C.F.R. § 204.5(k)(2), and thus is not eligible for preference visa classification under section 203(b)(2) of the Act. Nor

does the beneficiary meet the educational requirements on the labor certification to qualify for the job offered.

For the reasons stated above, considered both in sum and as separate grounds for denial, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.